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IN THE

Supreme Court of the United States

OCTOBER TERM 1991

AMERICAN DREDGING COMPANY,

Petitioner,

—v.—

WILLIAM ROBERT MILLER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION OF LAW PRESENTED

Whether the doctrine of *forum non conveniens* as applied by the federal courts in admiralty cases must be applied to maritime claims filed in state courts.

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Maritime Law Association of the United States ("MLA") respectfully submits this brief as *amicus curiae* in support of the Petition for Certiorari by American Dredging Company ("Petitioner"). Both Petitioner and Respondent have consented to the MLA's participation, and copies of the letters conveying such consent are being filed with the Clerk of the Court simultaneously with the submission of this brief.

INTEREST OF *AMICUS CURIAE*

MLA has a very strong interest in the disposition of this case. MLA is a nationwide bar association founded in 1899. It has a membership of about 3600 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests—shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

MLA's purposes are stated in its Articles of Association:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, *to promote uniformity in its enactment and interpretation*, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comité Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

(Emphasis added.)

In furtherance of these objectives MLA, during the ninety-three years of its existence, has sponsored a wide range of legislation dealing with maritime matters, including the Carriage of Goods by Sea Act[1] and the Federal Arbitration Act.[2] The MLA has also cooperated with congressional committees in the formulation of other maritime legislation.[3]

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1 46 U.S.C. §§ 1300-1315.

2 9 U.S.C. §§ 1-15.

3 *E.g.*, 1972 Water Pollution Control Act Amendments, 33 U.S.C §§ 1251-1376; implementation of the 1972 Convention for Preventing Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, *reprinted in* 6 M. M. COHEN, BENEDICT ON ADMIRALTY, Doc. No. 3-4 at 3-35 to 3-78.2 (7th rev'd ed. 1990) (hereinafter "BENEDICT"), *see* 33 C.F.R. ch. 1, subch. D, Special Note, at 160 (1987); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

MLA is also participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its Commissions on Trade Law ("UNCITRAL") and Trade and Development ("UNCTAD"). It works closely with the International Maritime Organization ("IMO").

MLA has actively participated, as one of some forty-nine national maritime law associations constituting the Comité Maritime International,[4] in the movement to achieve maximum international uniformity in maritime law through the medium of international conventions.[5]

MLA believes uniformity in maritime law, both national and international, is of great importance. This concern has been repeatedly expressed by our membership and standing committees. For example, in 1975 the MLA Standing Committee on Uniformity of U.S. Maritime Law recommended that steps be

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4 These now include the national associations of Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece, Hong Kong, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Mexico, Morocco, The Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Union of Soviet Socialist Republics, Venezuela and Yugoslavia.

5 *E.g.*, Assistance and Salvage (1910), 37 Stat. 1658 (1913), *reprinted in* 6 BENEDICT, Doc. No. 4-1 at 4-2 to 4-10; Ocean Bills of Lading (The Hague Rules) (1924), 120 L.N.T.S. 155, *reprinted in* 6 BENEDICT, Doc. No. 1-1 at 1-2 to 1-19; Collision (1910), *reprinted in* 6 BENEDICT, Doc. No. 3-2 at 3-11 to 3-19; Limitation of Liability of Owners of Sea-Going Ships (1957), *reprinted in* 6 BENEDICT, Doc. No. 5-2 at 5-11 to 5-28; Maritime Liens and Mortgages (1967), *reprinted in* 6A BENEDICT, Doc. No. 8-3 at 8-25 to 8-32; Civil Liability for Oil Pollution Damages (1969), U.N.T.S. 1409, *reprinted in* 6 BENEDICT, Doc. No. 6-3 at 6-62.133 to 6-76.3; and Limitation of Liability for Maritime Claims (1976), *reprinted in* 6 BENEDICT, Doc. No. 5-4 at 5-32.2 to 5-44.4.

taken to persuade congressional committees "that nationwide and, in fact, world-wide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well." A resolution to that effect was unanimously adopted at the MLA Annual Spring Meeting on April 25, 1975.[6] A substantially identical resolution was adopted by the American Bar Association in 1976. This policy has been reaffirmed by the MLA on several occasions, most recently in a 1986 resolution.[7]

MLA has, in furtherance of the uniformity policy and resolutions, filed *amicus* briefs in a number of cases, including a number of briefs accepted by this Court.[8]

It is also the policy of MLA to file briefs as *amicus curiae* only when important issues of maritime law are involved and the Court's decision may substantially affect the uniformity of maritime law.

Such a situation exists in this case. Application of state open-forum statutes to maritime cases not only destroys uniformity of U.S. maritime law but also invites and endorses forum shopping and unpredictability in an area in which consistency is essential. The Louisiana court's holding also perpetuates the now chronic conflict between Louisiana and Texas State Courts and the United States Court of Appeals for the Fifth Circuit.

Apart from the inherent problems arising from uncertainty in the application of a federal door-closing measure, there is the risk that state courts will neglect other elements of admiralty law. *See, e.g., Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992) (applying state strict liability statute to mar-

6 MLA Minutes, MLA Doc. No. 588 at 6397-98 (1975).

7 MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

8 *E.g., Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1973). For a more comprehensive listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

itime tort). Allowing a proliferation of chaotically different results in the same factual settings adversely affects the general viability of the doctrine of uniformity and thus the practices of MLA's membership and the wide variety of interests represented.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The problem of disparate treatment of *forum non conveniens* motions by state and federal courts is chronic and vexing. Forum shopping is encouraged by the difference between the law applied by federal and state courts, and produces a burden on the federal courts because remand to the state courts may sometimes, in the federal court's view, result in injustice. Lack of uniform treatment of this issue is an impediment to interstate and international commerce.

Congress has granted state courts only limited jurisdiction to hear maritime cases. Maritime cases are governed by federal law which applies uniformly, as a constitutional requirement, in federal and state courts alike. Characterization of a maritime law doctrine as "procedural" cannot avert its application, especially when a characteristic maritime doctrine is at issue.

The federal doctrine of *forum non conveniens* is a door-closing measure which must be enforced by state courts in maritime cases regardless whether an analogous measure exists under state law.

REASONS FOR GRANTING THE WRIT

I

THE CONFLICT BETWEEN THE FEDERAL AND STATE COURTS IS PERSISTENT AND VEXING.

The Fifth Circuit and Texas and Louisiana State Courts have been in conflict for years on precisely this issue.[9] *See, e.g., Exxon Corp. v. Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140 (1988), *appeal after remand*, 821 S.W.2d 190 (Tex. App. 14th Dist. 1991), *writ granted*, 35 Tex. Sup. Ct. J. 684 (1992). *Compare, e.g., Markzannes v. Bermuda Star Line, Inc.*, 545 So.2d 537 (La. 1989), *cert. denied sub nom. Bermuda Star Line, Inc. v. Markozannes*, 493 U.S. 1043 (1990), *and Kassapas v. Arkon Shipping Agency*, 485 So.2d 565 (La. Ct. App. 5th Cir.), *writ denied*, 488 So.2d 203 (La.), *cert. denied*, 479 U.S. 940 (1986), *with Ikospentakis v. Thelassic Steamship Agency*, 915 F.2d 176 (5th Cir. 1990), *and Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1382 (5th Cir. 1988). *See also* Petition n.4, at 11-12 (tracing history of *Chick Kam Choo v. Exxon Corp.*).

This distressing disharmony has already led to a burden on the federal courts in at least one case in which the Fifth Circuit felt compelled to refuse to allow a voluntary dismissal of a federal action because the plaintiff would have then proceeded in

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9 For example, in *Ikospentakis*, the Fifth Circuit observed:

> That the [*forum non conveniens*] defense is available to [defendants] and that it would be "stripped" from them in Louisiana state court, albeit in violation of the constitution's supremacy clause, are equally certain propositions. . . .
>
> . . . At some point, Louisiana must bend to the federal courts' construction of federal law. However, to insist that these foreign appellants become guinea pigs in an effort to overturn Louisiana's erroneous rule would blink at reality and would needlessly subject them to considerable expense as well as legal prejudice for the sake of vindicating principle. We need not reach such an unjust result.

915 F.2d at 178, 180.

a state court in which, as a practical matter, the doctrine of *forum non conveniens* would not be applied, thus prejudicing the foreign defendants. *Ikospentakis*, 915 F.2d at 180. Particularly in view of the burdens now placed on the federal courts, their dockets should not be further clogged by cases which could be entrusted to the state courts if those courts would apply governing federal doctrines.

Conflict on the applicability of *forum non conveniens* will continue to be a significant burden on the federal courts because of the variety of contexts in which the doctrine is raised. *See, e.g., Black Diamond Steamship Corp. v. Robert Stewart & Sons, Ltd.*, 336 U.S. 386 (1949) (salvage); *Tramp Oil v. MERMAID I*, 743 F.2d 48, 1985 AMC 459 (1st Cir. 1984) (maritime lien); *Calavo Growers of California v. Generali Belgium*, 632 F.2d 963, 1980 AMC 1993 (2d Cir. 1980), *cert. denied*, 449 U.S. 1084 (1981) (breach of marine insurance contract); *The WILJA*, 113 F.2d 646 (2d. Cir.), *cert. denied sub nom. O/Y Wipu v. Dreyfus*, 311 U.S. 687 (1940) (breach of charter party); *Ocean Shelf Trading v. Flota Mercante Grancolumbiana*, 638 F. Supp. 249, 1986 AMC 2482 (S.D.N.Y. 1986) (collision); *Matson Navigation Co. v. Stal-Laval Turbin AB*, 609 F. Supp. 579, 1985 AMC 2381 (N.D. Cal. 1985) (products liability for negligent design of ship's engine); *Red Sea Insurance v. S.S. LUCIA DEL MAR*, 1983 AMC 1630 (S.D.N.Y. 1982), *aff'd*, 1983 AMC 1631 (2d Cir. 1983) (cargo loss); *Argyll Shipping Co. v. Hanover Insurance Co.*, 297 F. Supp. 125 (S.D.N.Y. 1968) (general average); *Wall Street Traders Inc. v. Sociedad Espanola de Construccion Naval*, 245 F. Supp. 344 (S.D.N.Y. 1964) (breach of ship conversion contract); *Galban Lobo Trading Co. v. Canadian Leader Ltd.*, 1963 AMC 988 (S.D.N.Y. 1958) (breach of contract of carriage). While the courts in some of these cases decided to retain jurisdiction, each applied the doctrine of *forum non conveniens* to the maritime causes of action before it, thus illustrating the breadth of the range of commercial interests affected by the doctrine and the frequency with which it arises.

II

THE CONFLICT IS AN IMPEDIMENT TO INTERSTATE AND INTERNATIONAL COMMERCE.

The principle mandating uniform treatment of maritime cases is not a vacant theoretical requirement, but rather was designed to afford fairness to all maritime litigants by having their conduct and rights governed by the same rules, regardless of where their cases were tried. In 1874, the Supreme Court stated in *The LOTTAWANNA*:

> [T]he convenience of the commercial world, bound together, as it is, by mutual relations of trade and intercourse, demands that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. . . .
>
> One thing, however is unquestionable: The Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intent to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

88 U.S. (21 Wall.) 558, 575 (1875).[10]

In 1920, the Court in *Knickerbocker Ice Co. v. Stewart*, referring to the approval and adoption of the general maritime law as part of the laws of the United States, held:

10 The Court of Appeals for the Second Circuit observed, there is "another policy reason for adhering to a uniform standard [of *forum non conveniens*], namely, not to run afoul of the treaty obligations of the United States." *Alcoa Steamship Co. v. M/V NORDIC REGENT*, 654 F.2d 147, 152 (2d Cir.), *cert. denied*, 449 U.S. 890 (1980).

> The Constitution itself adopted and established as part of the laws of the United States, approved rules of the general maritime law . . . . Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose . . . .

253 U.S. 149, 160 (1920).

Because maritime commerce almost always involves international or interstate activities or at least sufficient contact with any number of fora to satisfy minimum due process requirements, operators and other defendants can be drawn into court almost anywhere, and since removal is not available simply because the claim is maritime, without application of the doctrine of *forum non conveniens*, defendants can be forced to test their rights and liabilities in an oppressive and vexatious location, even if neither the events nor the plaintiff has any meaningful contact whatsoever with the jurisdiction, as is the situation here. Thus, without uniformity, a litigant's rights would be subject to the vagaries of plaintiff's choice of forum, and commerce would suffer. *See Exxon*, 817 F.2d at 318 ("Applying state law inconsistent with 'characteristic features' would defeat the reasonably settled expectations of maritime actors.").

Uniformity is essential for predictability, and both tort and contract litigants are entitled to predictability in their legal relations. While the value of predictability is more often considered in connection with contracting parties who take account of the potential application of certain bodies of law in formulating their agreements, predictability is also of consequence in tort, where the parties are guided by their attorneys' perceptions of the law most likely to be applied and the rights and liabilities arising from those bodies of law. If attorneys cannot

make educated guesses about where an action will be tried and what rules will be applied, their ability to counsel their clients as to outcome, settlement value and every other aspect of the legal process will be greatly impaired. Litigation will be prolonged, as has happened here, as the series of appeals and reconsiderations multiply.[11]

If state courts are free to reject the doctrine of *forum non conveniens*, the uncertainties of litigation are vastly increased. Moreover, a state court which feels free to avoid application of one general maritime rule will be encouraged to overlook other admiralty principles. *See, e.g., Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992) (applying state strict liability statute to maritime tort).

III

THIS COURT SHOULD UPHOLD THE PRINCIPLE OF UNIFORMITY OF MARITIME LAW.

A. The Intent to Maintain National Uniformity Was Confirmed in the Constitution.

Article I, Section 8, Clause 3 (the Commerce Clause) states:

> The Congress shall have power . . . To regulate commerce with foreign Nations, and among the several States . . . .

Article I, Section 8, Clause 18 (the Necessary and Proper Clause) states:

> The Congress shall have power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . . .

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11 *See* Appendices A, B and C of Petitioner's Petition (showing the progress of this case through successive appeals and reversal in the state court); Petition at 5-7. The history of *Exxon v. Chick Kam Choo* also illustrates this tortuous pattern. *See* Petition n.4, at 11-12.

Article III, Section 2, Clause 3 (the Admiralty Clause) states:

> The judicial power shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . . .

Article VI, Section 2 (the Supremacy Clause) states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Admiralty, and Necessary and Proper Clauses, and decisions interpreting them, confirm that, except in areas of purely local concern, the general maritime law is to apply in all admiralty and maritime cases in the United States. The Supremacy Clause requires state courts to follow established maritime law.

B. Although Congress Has Delegated a Portion of Admiralty Law Jurisdiction to the State Courts, They Are Required to Apply Federal Admiralty Law.

Congress, in implementing constitutional provisions by statute, recognized from the first that it might not be convenient to bring every maritime case to one of the few federal courts. It therefore delegated to the state courts an alternative limited jurisdiction to hear ordinary *in personam* maritime causes of action not involving the special procedures and remedies of admiralty, such as arrests, perfection of liens, etc. This was done by the "saving to suitors" clause in the Judiciary Act of 1789, now reworded in section 1333 of Title 28 of the U.S. Code. This purpose, however, cannot be served if, because of uncertainty of the state court's application of maritime law, the federal courts become chary of permitting cases to proceed in state court.

C. Application of the *Forum Non Conveniens* Doctrine Cannot Be Avoided by Characterizing It as "Procedural."

To say that the principle of uniformity ought to be limited to "substance" and denied to "procedure" does not resolve the question here.

In *Panama Railroad Co. v. Johnson*, the Court pointed out in discussing "admiralty and maritime jurisdiction":

> The framers of the Constitution were familiar with that [admiralty] system and proceeded with it in mind. Their purpose was not to strike down or abrogate the system, but to place the entire subject—its substantive as well as its *procedural* features—under national control . . . .

264 U.S. 375, 386 (1924) (emphasis added). In many maritime cases, procedure is as important as substantive law.

The United States Supreme Court has rejected the use of the epithet "procedural" as a means of deciding cases. In *Guaranty Trust Co. v. York*, 326 U.S. 99, 108 (1945), the Court clearly recognized the infirmity of such analysis:

> Matters of "substance" and matters of "procedure" are much talked about in the books as though they defined a great divide cutting across the whole domain of law. But, of course, "substance" and "procedure" are the same key words to very different problems. Neither "substance" nor "procedure" represents the same invariants. Each implies different variables depending upon the particular problem for which is used.

One of the cases with which the Court illustrated the point was *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248-49 (1942), a maritime case which had come up through the state courts. The Court held that a burden of proof, however it might be thought to be procedural, had such consequences that the federal rule must be used by the state court.

In *Hanna v. Plumer*, 380 U.S. 460 (1965), the Court reaffirmed its view that the dichotomy between "substance" and "procedure" was not adequate for deciding cases, while making clear that the criterion of "outcome-determination" is also not a universal rule. In both *Guaranty Trust* and *Hanna*, the Court stressed the discouragement of forum-shopping as a ground for looking beyond the common epithets in deciding whether federal or state standards should be applied.

The *Guaranty Trust* and *Hanna* cases indicate that the disparaging adjective "procedural" should not be used to reject a doctrine that is characteristic of the maritime law which governs this case.

D. The Doctrine of *Forum Non Conveniens* Is a "Characteristic Feature" of the Maritime Law which Must Be Applied in Maritime Cases Such as the One Before this Court.

As stated in *Exxon*:

> Applying state law inconsistent with "characteristic features" would defeat the reasonably settled expectations of maritime actors. . . .
>
> . . . The doctrine of *forum non conveniens* is the heart and soul of the federal policy of judicial self-restraint in the day-to-day workings of the maritime law. Texas cannot be allowed to thwart that policy in a maritime case brought to its courts. . . .
>
> . . . State law inconsistent with that doctrine [of *forum non conveniens*] cannot be applied in a maritime case.

817 F.2d at 318, 323-24 (footnote omitted). *Accord*, *Ikospentakis*, 915 F.2d at 178 ("This court has recognized that *forum non conveniens* is a "characteristic feature" of maritime law, tracing its history back to the earliest decisions of the federal courts."). The general maritime law has embraced the doctrine for over 190 years, *see Willendson v. Forsoket*, 29 F. Cas. 1283 (D. Pa. 1801) (No. 17,682), and actually is its source.

Alcoa Steamship, 654 F.2d at 154 (reviewing cases). See cases cited *supra*, at 7, for examples of the maritime contexts in which *forum non conveniens* has been applied.

IV

UNIFORMITY REQUIRES THAT IN MARITIME CASES, FEDERAL DOOR-CLOSING MEASURES, SUCH AS *FORUM NON CONVENIENS*, ARE BINDING ON THE STATE COURTS.

Although the federal government has limited powers, when it exercises those powers, under the Supremacy Clause the states are bound thereby, even to the extent of giving exclusive jurisdiction to federal courts in such matters. *See, e.g.*, 15 U.S.C. § 1346(b) (tort claims against the United States). This constitutional principle has been applied on many occasions in the form of federal door-closing measures which bind state courts. This is especially true in admiralty cases where Congress has consistently pursued uniformity and given federal courts "exclusive" jurisdiction, except for delegating a limited jurisdiction to state courts by "saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

For example, in an admiralty case, the United States Supreme Court described the criteria for enforcing a foreign forum clause, thereby closing all courts here to certain disputes arising under international maritime contracts. *The BREMEN v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). Congress has mandated that *all* American courts must stay their proceedings whenever a party invokes a valid arbitration clause in a suit involving maritime, international or interstate commerce, regardless whether the underlying claims arise under federal or state law. 9 U.S.C. § 3. *See Southland v. Keating*, 465 U.S. 1 (1984); *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc.*, 473 U.S. 614 (1985).

The doctrine of *forum non conveniens* is another type of door-closing measure first enunciated by this Court in an admiralty suit. *Canada Malting Co. v. Paterson Co.*, 285 U.S. 413 (1932). The question here is not when state courts may close their own doors to federal claims, *Missouri v. Mayfield*, 340 U.S. 1 (1950), but rather when state courts *must* apply a doctrine characteristic of the general maritime law, even when application of the doctrine may result in the state court closing its doors to a maritime suit.

It would be an abuse of discretion for *any* district court to decline to enforce the doctrine of *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and *Piper v. Reyno*, 454 U.S. 235 (1981), when applicable. These cases mandate that some cases simply not be tried in the forum selected by plaintiff if the stated factors require adjudication elsewhere.

In *Testa v. Katt*, 330 U.S. 386 (1947), the United States Supreme Court held that state courts which lacked jurisdiction under state law to hear federal claims could be required by federal law to hear them nonetheless. The converse is equally true. In a maritime case where under *Gulf Oil* and *Piper* a federal court sitting in a given district could not hear the case, a state court likewise should be required to apply the doctrine and dismiss.

The existence of a state open-forum statute does not alter the result. A state legislature lacks power to keep state courts open to hear claims for which they have been deprived of jurisdiction by federal law. *See The MOSES TAYLOR*, 71 U.S. (4 Wall.) 411 (1867); *The HINE v. Trevor*, 71 U.S. (4 Wall.) 555 (1867); *Lindgren v. United States*, 281 U.S. 38, 47 (1930); *Southland*, 465 U.S. at 15-16. In enacting the "saving to suitors" clause, Congress granted state courts "partially concurrent" jurisdiction to hear some admiralty suits. *Knickerbocker Ice*, 253 U.S. at 161. But, Congress quite clearly never intended that state courts should exercise greater jurisdiction in maritime cases than the federal courts sitting in the state.

CONCLUSION

We most respectfully urge this Honorable Court to grant the Petition for Certiorari.

Dated: June 29, 1992

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City of Brooklyn and the County of Kings; I am over the age of eighteen years and not a party to the within action; my business address is: One Battery Park Plaza, New York, New York 10004.

On June 29, 1992, I served the within *Amicus Curiae* Brief in Support of the Petition for a Writ of Certiorari in re: "American Dredging Company v. William Robert Miller" in the United States Supreme Court, October Term 1991, No. 91-1950, on the Parties in said action by placing three copies thereof enclosed in a sealed envelope with postage fully pre-paid, in a United States post office mail box at New York, New York, addressed as follows:

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All Parties required to be served have been served.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on June 29, 1992 at New York, New York.

LIZABETH L. BURRELL
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OPINIONS BELOW

All opinions below are contained in the Joint Appendix. The opinion of the trial court, the Civil District Court for Orleans Parish in Louisiana, is reproduced in the Joint Appendix, pp. 51, 52. Its judgment, dismissing the suit on the basis of petitioner's exception and maritime defense of *forum non conveniens*, appears in the Joint Appendix, pp. 49, 50. The opinion of the Louisiana Fourth Circuit Court of Appeal, affirming the trial court judgment, is reported at *Miller v. American Dredging Co.*, 580 So. 2d 1091 (La. App. 4th Cir. 1991) and is reproduced in the Joint Appendix, pp. 53-57. The Louisiana Supreme Court's opinion, reversing the appellate court and the trial court judgments, is reported at *Miller v. American Dredging Co.*, 595 So. 2d 615 (La. 1992). It is reproduced in the Joint Appendix, pp. 58-67.

JURISDICTIONAL STATEMENT

The judgment of the Louisiana Supreme Court was entered on March 2, 1992. The petition for certiorari was filed on May 29, 1992 and this Court granted certiorari on April 19, 1993. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257 (West Supp. 1992).

CONSTITUTIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE

Article III, Section 2, Clause 1 of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; -to Controversies between two or more States; - between a state and Citizens of another state; between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

28 U.S.C.A. § 1333 (1949), commonly known as the "saving to suitors" clause, provides as follows:

> The district courts shall have original jurisdiction, exclusive of the courts of the States of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

Louisiana Code of Civil Procedure Article 123 provides as follows:

> A.For the convenience of the parties and witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.
>
> B.Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription, provided that a suit on the same cause of action is commenced in a court of competent jurisdiction within sixty days from the rendition of the judgment of dismissal.
>
> C.The provisions of Paragraph B shall not apply to claims brought pursuant to 46 U.S.C.A. § 688 (1920 and West Supp. 1992) or federal maritime law.

STATEMENT OF CASE

William Robert Miller, Sr., petitioner, is a resident of Mississippi. In August of 1987, he moved to Pennsylvania where he joined the Union of Operating Engineers, Local 25 in Philadelphia, Pennsylvania. Through the union, he was hired by American Dredging Company ("American Dredging") to work aboard the Tug JOHN R in the Delaware River. American Dredging is a Pennsylvania corporation with its principal place of business in Camden, New Jersey, which is located just across the Delaware River from Philadelphia. (J.A. 8, 13, 32, 53, 58).

This action arises out of an accident allegedly sustained by Mr. Miller aboard the Tug JOHN R amid operations in the Delaware River off Marcus Hook, Pennsylvania, on December 12, 1987. (J.A. 8, 12, 53, 58). The Tug JOHN R does not now nor has it ever navigated in Louisiana waters. The situs of the vessel's operations is the Delaware River near Camden, New Jersey, where the vessel can be available for inspection during discovery, if necessary. (J.A. 13, 53, 54).

Mr. Miller was initially treated at Sacred Heart Medical Center in Chester, Pennsylvania. Subsequently, he was treated at the Hospital for Joint Diseases Orthopedic Institute located in New York City. In February of 1988, Mr. Miller returned to Mississippi where he has been treated by other physicians. (J.A. 32, 53, 58).

On December 1, 1989, Mr. Miller filed this suit against American Dredging in Louisiana state court, the Civil District Court for the Parish of Orleans. (J.A. 1, 7-9). American Dredging filed exceptions, challenging personal jurisdiction and requesting a dismissal pursuant to the doctrine of *forum non conveniens*. (J.A. 1, 10, 11). On September 21, 1990, the exceptions were heard. On September 25, 1990, District Judge Fedoroff entered his reasons for judgment and expressly concluded as follows:

> It is patent that the Civil District Court is not a convenient forum. Selection of this Court, having absolutely no connection with the case, is forum shopping of the worse [*sic*] sort.
>
> (J.A. 52)

Following federal maritime authority, the trial court dismissed the action subject to the right of the claimant to proceed in Pennsylvania.[1] (J.A. 49, 50).

On October 26, 1990, plaintiff filed a motion for suspensive appeal. On November 8, 1990, the appeal order was signed

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[1] The defendant has waived any claim that the suit is time-barred should the plaintiff bring the action in a Pennsylvania court of competent jurisdiction.

by Judge Fedoroff. On May 6, 1991, the Louisiana Fourth Circuit Court of Appeals heard argument. (J.A. 2, 3). In its decision of May 30, 1991, the Fourth Circuit affirmed the decision of the lower court, holding that the dismissal was proper under the admiralty doctrine of *forum non conveniens*. *Miller v. American Dredging Co.*, 580 So. 2d 1091 (La. App. 4th Cir. 1991). (J.A. 53-57). The appellate court specifically held as follows:

> In the face of clear pronouncements by the Federal judiciary that maritime cases filed in state court must be governed by the federal doctrine of *forum non conveniens*, we are compelled to apply that defense in the instant case. We agree with the trial court's factual conclusion that Louisiana has absolutely no connection with this case. Neither party is a Louisiana resident; the accident occurred on the Delaware river; plaintiff was treated in Pennsylvania, New York and Mississippi; the vessel on which he was injured has never navigated Louisiana's waters. The only semblance of connexity with Louisiana is the fact that ADC has a registered agent here. That alone is not enough.

Miller, 580 So. 2d at 1093; (J.A. 56, 57).

On June 28, 1991, Mr. Miller petitioned the Louisiana Supreme Court to review the decision of the Fourth Circuit Court of Appeals. By order dated October 18, 1991, the Louisiana Supreme Court granted the writ to review the decision of the Fourth Circuit. (J.A. 4, 5). On March 2, 1992, the Louisiana Supreme Court reversed the decision of the trial and appellate courts, declining to apply the doctrine of *forum non conveniens* to the state court action. *Miller v. American Dredging Co.*, 595

So. 2d 615 (La. 1992). (J.A. 6, 58-67). Relying upon federal diversity cases, the Court concluded that it could apply Louisiana procedural law, which only recognizes *forum non conveniens* dismissals in non-maritime cases.

American Dredging filed its petition for certiorari on May 29, 1992, and the Supreme Court granted the petition on April 19, 1993.

SUMMARY OF THE ARGUMENT

The question presented herein is whether the admiralty doctrine of *forum non conveniens* is applicable to maritime actions filed in state courts pursuant to the "savings to suitors" clause. 28 U.S.C.A. § 1333 (1949). Petitioner, American Dredging Company ("American Dredging"), respectfully urges that the trial court and Louisiana Fourth Circuit Court of Appeals correctly applied this admiralty doctrine, rather than state procedural law, to these maritime claims. William Robert Miller was not a resident or a citizen of Louisiana. His injury occurred on the tug on the Delaware River while he was a Pennsylvania resident, a member of a Pennsylvania union and employed by a Pennsylvania corporation. The doctrine was correctly applied by the trial court. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S. Ct. 252 (1981).

Petitioner respectfully submits that the doctrine of *forum non conveniens* is a characteristic feature of admiralty which has modulated this discretionary exercise of admiralty jurisdiction in a fashion commensurate with the Constitutional protection of maritime commerce. *Mason v. Ship Blaireau*, 6 U.S. (2 Cranch) 240 (1804); *The Belgenland*, 114 U.S. 355, 5 S. Ct. 860 (1885); *Canada Malting Co. v. Paterson S.S. Ltd.*, 285 U.S. 413, 52 S. Ct. 413 (1932).

The discretionary nature of the doctrine complements the Constitutional goal of admiralty to protect and promote maritime commerce. *Piper, supra*; *The Lottawanna*, 88 U.S. (21 Wall) 558, 574 (1875); *Washington v. W. C. Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302 (1924). It accords appropriate deference to the plaintiff's choice of forum while mandating consideration of an alternate suitable forum and balancing private and public factors, all of which bear upon the determination of the proper forum for a fair and convenient resolution of the dispute. *Piper, supra*; *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839 (1947); *Koster v. (American) Lumbermen's Mut. Casualty Co.*, 330 U.S. 518, 67 S. Ct. 828 (1947). As a doctrine which protects the rights of all litigants to an adjudication of their dispute in a forum convenient to the dispute at hand, the parties, the witnesses and the other source of proof, the application of *forum non conveniens* in admiralty cannot be evaded by reference to state procedural rules under the guise of the "reverse-*Erie*" concept. Compare *Kossick v. United Fruit Co.*, 365 U.S. 731, 81 S. Ct. 886 (1961); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246 (1942).

Forum non conveniens is a fundamental part of the admiralty which provides protection of maritime commerce against vexatious or harassing litigation in inconvenient fora detrimental to the goals of uniformity of maritime law. In the instant matter, the Civil District Court for Orleans Parish, State of Louisiana correctly applied this admiralty doctrine, dismissing these maritime claims subject to their adjudication in Pennsylvania.

ARGUMENT

Petitioner, American Dredging Company (American Dredging), respectfully submits that the doctrine of *forum non conveniens* is an integral feature of admiralty which merits

application to all maritime cases. The doctrine's central focus upon the convenience of the parties and the court promotes a central theme and recurring goal of maritime law - the convenient (efficient, economical and fair) resolution of maritime disputes between distant parties engaged in maritime commerce.

I.

The General Maritime Law of the United States is Applicable to All Cases of Admiralty Jurisdiction

The Constitution, which explicitly extends the judicial power of the United States "to all Cases of admiralty and maritime Jurisdiction" is the source of authority for the development of the general maritime law of the United States. U. S. Const., Art. III, Sec. 2, Cl. 1. *The Lottawana*, 88 U.S. (21 Wall) 558, 575 (1875); *Butler v. Boston Steamship Co.*, 130 U.S. 527, 556-557,9 S. Ct. 612 (1889). This endowment of judicial authority is the only instance in which the Constitution grants jurisdiction over a specific area of substantive law.[2] The framers of the Constitution placed this authority in the national courts in recognition that protectionism of local interests by state laws and state courts was potentially devastating to the maritime commerce important to the new nation.[3] The Constitution therefore

[2] *See:* U. S. Const., Art. III, generally.

[3] *See, e.g.* James Madison, "Vices of the Political System of the United States," *The Writings of James Madison* (Vol. 2) (G. Hunt ed. 1901) pp. 361-369, at 263. Letters to Edmund Randolph and George Washington, dated April 8 and 16, 1987, respectively, *Id* at 336-340, 339; 344-352, 347; A. Hamilton, *The Federalist*, No. 80 at 478; 3 Joseph Story, *Commentaries on the Constitution of the United States* , §1662 at 529-530 (L. W. Levy Ed., 1970)

explicitly recognized authority of the national judiciary over all cases of admiralty and maritime jurisdiction.

In furtherance of its Constitutional authority, the Supreme Court has played the leading role in the definition of the breadth of admiralty jurisdiction and in the formulation of the general maritime law of the United States. Admiralty jurisdiction was interpreted broadly, and early federal decisions held that the "admiralty and maritime" jurisdiction would neither be circumscribed by the narrow rules of English common law nor be bound to follow principles of English admiralty courts. *DeLovio v. Boit*, 7 F. Cas. 418, (C.C.D. Mass., 1815); *The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443 (1852). As to admiralty jurisdiction, this Court has indicated the Constitutional reach of admiralty is a matter of judicial cognizance which neither Congress nor the states can modify by legislation. *Crowell v. Benson*, 285 U.S. 22, 54-55, 52 S. Ct. 285, 294 (1932); *The Lottawana*, 88 U.S. at 558; *The Steamer St. Lawrence*, 66 U.S. (1 Black) 522, 527 (1862) (*dictum*); *Butler*, 130 U.S. at 557 (*dictum*).

Beyond matters of jurisdiction, this Court has played the paramount role with Congress in the development of the general maritime law. Simultaneously with the broad interpretation of admiralty jurisdiction, the United States developed "a maritime law of our own." *The Lottawana*, 88 U.S. (21 Wall) 558, 574 (1875). As articulated in *The Lottawana*, the Constitutional grant of judicial power over admiralty cases mandates the application of a uniform system of maritime law:

> One thing, however, is unquestionable: the Constitution must have referred to a system of law coextensive with and operating uniformly in the

> whole country. It certainly could not have been the intention to place the Rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign States.

The Lottawana, 88 U.S. (21 Wall.) at 575.

The role of the Court in the development of uniform principles of admiralty remains evident in the Court's modern decisions in admiralty matters. *See, e.g. Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S. Ct. 317, 325-328 (1990), restoring a uniform rule for wrongful death actions by the survivors of seamen; *Offshore Logistics v. Tallentire*, 477 U.S. 207, 106 S. Ct. 2485, 2494-2500 (1986), upholding a uniform application of the Death on the High Seas Act, 46 U.S.C.A. §§ 761, 767; *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772 (1970), overturning its early holding in *The Harrisburg* 119 U.S. 199, 7 S.Ct. 140 (1886) and recognizing a maritime wrongful death action for maritime workers in U.S. waters; *Kemarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630-632, 79 S. Ct. 406 (1959), formulating a uniform liability standard with respect to non-crewmembers aboard vessels.

The national authority of the Supreme Court and Congress is paramount in the development of maritime law. Under our federal system, the states exercise a concurrent and complementary role. In the Judiciary Act of 1789, the first Congress recognized the jurisdiction of state courts to provide common

law remedies over matters which also fall within the admiralty jurisdiction of the United States.[4] Pursuant to this "concurrent jurisdiction," the states may adjudicate *in personam* claims cognizable in admiralty, and state laws may even supplement admiralty principles within certain limitations. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 373, 79 S. Ct. 468, 480 (1959). While the extent of permissible "supplementation" is difficult to define with precision, the Court has held that state laws and jurisprudence may not be applied in a fashion which would "contravene the essential purposes of, or . . . work material injury to of such [general maritime] law or interfere with its proper harmony and uniformity in its international and interstate relations." *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160, 40 S. Ct. 438, 440 (1920); see also *Kossick v. United Fruit Co.*, 365 U.S. 731, 81 S.Ct. 886 (1961); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246 (1942). As noted in *Washington v. W. C. Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302 (1924), state laws, even when made applicable to admiralty through Congressional enactment, may not be applied in a fashion which would disrupt the uniformity of the general maritime law:

> To prevent this result the Constitution adopted the law of the sea as the measure of maritime rights and obligations. The confusion and difficulty, if vessels were compelled to comply with the local statutes at every port, are not difficult to see. Of

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[4] The original statute granted federal courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." Judiciary Act of 1789, Ch. 20. 1 Stat. 73, 76, 77, Comp. Stat. §§ 530, 991: Sec. 9 (Sept. 24, 1789).

> course, some within the states may prefer local rules; but the Union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interest must yield to the common welfare. The Constitution is supreme.

Washington, 264 U.S. at 228.

II.
The Doctrine of *Forum Non Conveniens* Is an Essential and Characteristic Feature of Admiralty Jurisdiction

The doctrine of *forum non conveniens* is the legal principle which governs the discretionary exercise of jurisdiction in cases where the forum chosen by the plaintiff may be inconvenient for fair and efficient resolution of the dispute at issue. Pursuant to this doctrine, the trial court may in its discretion retain jurisdiction over the action or dismiss the case subject to protecting the right of the plaintiff to proceed in a convenient alternative forum. In its present form, the doctrine provides the discretionary guidelines which accord appropriate deference to the plaintiff's choice of forum while ascertaining the availability of an alternate forum and examining various private and public factors affecting the convenient resolution of the dispute at issue. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S. Ct. 252 (1981).

The modern exposition of the doctrine of *forum non conveniens* is articulated in three non-maritime cases. *Piper, supra*; *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839 (1947); *Koster v. (American) Lumbermen's Mut. Casualty Co.*, 330 U.S. 518, 67 S. Ct. 828 (1947). The roots of this doctrine,

however, are firmly grounded in the discretionary exercise of admiralty jurisdiction. See, e.g. *Mason v. Ship Blaireau*, 6 U.S. (2 Cranch) 240 (1804); *The Belgenland*, 114 U.S. 355, 5 S. Ct. 860 (1885); *Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd.*, 281 U.S. 515, 50 S. Ct. 400 (1930); *Canada Malting Co. v. Paterson S.S., Ltd.*, 285 U.S. 413, 52 S. Ct. 413 (1932); *Willendson v. Forsoket*, 29 F. Cas. 1283 (D. Pa. 1801) (No. 17,682). As noted in Justice Black's dissent to the importation of this doctrine into common law, the power to decline the exercise of jurisdiction relates to "reasons peculiar to the special problems of admiralty and to the extraordinary remedies of equity . . ." *Gilbert*, 330 U.S. at 513.

As early as 1804, Chief Justice Marshall, sitting as Circuit Judge, discussed the discretionary jurisdiction of admiralty in a salvage case involving a French ship saved by British vessel and brought into an American port. *Mason v. Ship Blaireau*, 6 U.S. (2 Cranch) 240 (1804). Although neither litigant had objected to the proceedings, the Court made the following observation about the jurisdiction of the admiralty court:

> In this case, a preliminary question has been made, by the counsel for the plaintiffs, which ought not to be disregarded. As the parties interested except the owners of the cargo of the Firm, are not Americans, a doubt has been suggested, respecting the jurisdiction of the court, and upon a reference to authorities, the point does not appear to have been ever settled. These doubts seem rather founded on the idea, that upon principles of general policy, this court ought not to take cognizance of a case entirely between foreigners, than from any positive incapacity to do so. *On weighing the considerations drawn from public convenience,*

> *those in favor of the jurisdiction, appear much to overbalance those against it*, and it is the opinion of this court, that, whatever doubts may exist in a case, where the jurisdiction may be objected to, there ought to be none where the parties assent to it.

Mason, 6 U.S. at 264. (Emphasis added.)

In *The Belgenland*, 114 U.S. 355, 5 S. Ct. 860 (1885), this Court examined the exercise of jurisdiction in a case involving a high seas collision between a Norwegian bark and a Belgian steamship. The Court enumerated various considerations affecting its exercise of jurisdiction, including the nationality of the parties, location of the tort, location of the *res*, convenience of the parties, treaty provisions, choice of law, etc. *Belgenland*, 114 U.S. at 361-368. The Court's approval of the exercise of jurisdiction implicitly recognized the underlying discretion of the admiralty court to decline jurisdiction on the basis of these factors. *The Belgenland*, 114 U.S. at 367, 368.

This discretion was again recognized by this Court in the *Canada Malting Co. v. Paterson Steamships S.S. Ltd.*, 285 U.S. 413, 52 S.Ct. 413 (1932), and *Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd.*, 281 U.S. 515, 50 S.Ct. 400 (1930). In *Canada Malting*, Justice Brandeis explicitly upheld the discretion of the trial court to decline jurisdiction even though the collision occurred in United States waters and regardless of whether United States law would have been applicable to the action in U. S. Courts:

> The libelants concede, as they must, that in a suit in admiralty between foreigners it is ordinarily within the discretion of the District Court to refuse to retain jurisdiction, and that the exercise of its

> discretion will not be disturbed unless abused. (Citations omitted.)
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> * * *
>
> First. The contention that the jurisdiction was obligatory rests upon the fact that the collision occurred within the territorial waters of the United States. The argument is that a cause of action arising from a collision occurring on territorial waters of the United States arises out of its laws, since within its territory there can be no other law. (Citations omitted.)
>
> * * *
>
> We have no occasion to inquire by what law the rights of the parties are governed, as we are of the opinion that, under any view of that question, it lay within the discretion of the District Court to decline to assume jurisdiction over the controversy.

Canada Malting, 285 U.S. at 418-420.

This Court's recognition of this doctrine in admiralty and has been followed by lower federal courts which have often applied this doctrine to choice of forum issues in maritime cases.[5] Likewise, *forum non conveniens* is recognized by the

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[5] *Ikospentakis v. Thalassic S. S. Agency*, 915 F.2d 176 (5th Cir. 1990), *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374 (5th Cir. 1988), *Exxon v. Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140, 108 S. Ct. 1684 (1988), *Cruz v. Maritime Co. of Philippines*, 702 F.2d 47 (2d Cir. 1983); *De Mateos*

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principal treatises on admiralty as an established principle of maritime law.[6]

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v. Texaco, Inc., 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904, 98 S. Ct. 1449 (1978); *Pain v. United Technologies Corp.*, 637 F.2d 775 (D. C. Cir. 1980) (involving claims under the Death on the High Seas Act relating to the helicopter crash into North Sea; *Gonzalez v. Naviera Neptumo A.A.*, 832 F.2d 876 (5th Cir. 1987); *La Seguridad v. Transytur Line*, 707 F.2d 1304 (11th Cir. 1983); *Vargas v. M/V MINI LAMA*, 709 F. Supp. 117 (E.D. La. 1989); *Pastewka v. Texaco, Inc.* 565 F.2d 851 (3d Cir. 1977); *Gazis v. John S. Latsis Inc.*, 729 F. Supp. 979 (S.D. N.Y. 1990); *Sherrill v. Brinkerhoff Maritime Drilling*, 615 F. Supp. 1021 (N.D. Cal. 1985); *cf. Hernandez v. Cali, Inc.*, 32 A.D.2d 192 (N.Y. App. Div. 1969). While recognition of this doctrine has been largely uniform among the circuits, a few courts have suggested that when American law is applicable a *forum non conveniens* dismissal is improper since it would undermine the application of U. S. law. See: *Zipfel v. Halliburton Co.*, 832 F.2d 1477, 1486 (9th Cir. 1987), *cert. denied*, 486 U.S. 1054, 108 S. Ct. 2819 (1988); *Needham v. Phillips Petroleum Co.*, 719 F.2d 1481, 1483 (10th Cir. 1983); *Szumlicz v. Norwegian American Line, Inc.*, 698 F.2d 1192, 1195 (11th Cir. 1983); *Fisher v. The Agios Nicolaos V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied*, 454 U.S. 816, 102 S. Ct. 92 (1981), overruled by *In re Air Crash near New Orleans*, 821 F.2d 1147 (5th Cir. 1987). The choice of law question is not at issue in this case.

[6] Friedell, *Benedict on Admiralty*, 1 §§ 105, 121, 122, 129 pp. 8.41 - 8 57 (7th ed. 1991); Gilmore & Black, *The Law of Admiralty*, §§ 1-19, pp. 51-52 (2d ed. 1975); Baer, *Admiralty Law of the Supreme Court*, § 17-2, p. 488 (3d ed. 1979); Healy & Sharp, *Admiralty Cases & Materials*, Ch. 2, § F, pp. 157-162 (2d ed. 1986); Schoenbaum, *Admiralty and Maritime Law*, §§ 5-8, 8-8, 13-9, 20-6, 11, pp. 189, 270, 477, 478, 639, 651-653 (1987).

This Court has never considered the question presented herein - whether state courts are to apply the maritime doctrine or state procedure to admiralty cases filed in state court. In *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 108 S. Ct. 1684 (1988), the Court considered the related question of whether the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283, authorized a federal court to enjoin state court consideration of a *forum non conveniens* question previously considered by the federal court. In concluding that the relitigation exception was not applicable, the Court acknowledged, without upholding, the Fifth Circuit's recognition of the preemptive effect of this admiralty doctrine. *Choo*, 486 U.S. at 150, 108 S.Ct. at 1691. The concurring opinion of Justice White also acknowledged the "substantial" federal interest in uniformity in admiralty and the potential preemptive effect of federal *forum non conveniens* rulings. *Choo*, 486 U.S. at 151; 108 S.Ct. at 1692. However, the precise issue presented here was not decided there.

The Fifth Circuit Court of Appeals has considered conflict between this doctrine and state procedure and has held that "*forum non conveniens* is `a characteristic feature' of maritime law" which state and federal courts are bound to apply in the adjudication of maritime cases. *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176, 178-180 (5th Cir. 1990); *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374 (5th Cir. 1988), *see also: Exxon Corp. v. Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140, 108 S. Ct. 1684 (1988). In *Ikospentakis*, the Fifth Circuit declined to permit a voluntary dismissal of a Jones Act federal suit because such a dismissal would have unfairly prejudiced the maritime defendant to state court litigation without safeguarding its right to a trial in a convenient forum:

> There is some irony in our conclusion. Our court has previously determined that a federal maritime

defense of *forum non conveniens* is constitutionally supreme in a maritime or Jones Act case over state laws that do not recognize this doctrine. *Exxon Corp. v. Chick Kam Choo*, 817 F.2d at 307 (decision reversed on other grounds). We endorse that holding again. Louisiana courts have definitely refused to recognize this ruling. *Markzannes*, 545 So. 2d at 537. If there were any ambiguity in Louisiana's law, we would be inclined to enforce *Chick Kam Choo* rigorously and hold that there was no "plain legal prejudice" suffered by these appellants, because Louisiana courts must recognize the preemptive force of the federal *forum non conveniens* doctrine in this seaman's case. At some point, Louisiana must bend to the federal courts' construction of federal law. However, to insist that these foreign appellants become guinea pigs in an effort to overturn Louisiana's erroneous

> rule would blink at reality and would needlessly subject them to considerable expense as well as legal prejudice for the sake of vindicating principle. We need not reach such an unjust result."

Ikospentakis, 915 F.2d at 180

The discretionary nature of this doctrine and the criteria considered by the trial court are exactly suited to the conflicts frequently associated with the exercise of admiralty jurisdiction over distant parties. The very nature of maritime commerce necessarily involves contacts and disputes among disparate and distant interests. The essential role of admiralty jurisdiction in protecting and promoting maritime commerce therefore recognizes and respects the rights of such distant interests to a fair and convenient resolution of their disputes. This view of admiralty

jurisdiction is reflected in the holding and language of Circuit Judge Story in *DeLovio v. Boit*:

> The language of the constitution will therefore warrant the most liberal interpretation; and it may not be unfit to hold, that it had reference to that maritime jurisdiction, which commercial convenience, public policy, and national rights, have contributed to establish with slight local differences, over all Europe; that jurisdiction, which, under the name of consular courts, first established itself upon the shores of the Mediterranean, and, from the general equity and simplicity of its proceedings, soon commended itself to all the maritime states; that jurisdiction, in short, which, collecting the wisdom of the civil law, and combining it with the customs and usages of the sea, produced the venerable Consolato del Mare, and still continues in its decisions to regulate the commerce, the intercourse, and the warfare of mankind. (Citations omitted.)

DeLovio, 7 F. Cas. at 443.

In absence of uniform recognition of this doctrine in admiralty matters, the current practice of multiple adjudications and extensive forum shopping will continue even after explicit adverse federal judgments.[7] It is difficult to conceive of a greater

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[7] *See, e.g. Villar v. Crowley Maritime Corporation*, 780 F.Supp. 1467 (S.D.Tex. 1992); *Quintero v. Klaveness Ship Lines*, 914 F.2d 717 (5th Cir. 1990); *Zipfel v. Halliburton Co.*, 832 F.2d 1477, 1486 (9th Cir. 1987), *cert. denied*, 486 U.S. 1054, 108 S. Ct. 2819 (1988);

impediment to maritime commerce than the unfettered exposure of distant maritime interests to multiple litigation in inconvenient fora without regard to uniform principles of admiralty.

III.
Application of the Doctrine of *Forum Non Conveniens* May Not Be Defeated By Mere Reference to Substance and Procedure

Forum non conveniens provides fundamental protection to maritime interests against unrestricted forum shopping. It is not a mere procedural device to be cast aside by state rules of practice. In the decision below and in its earlier decision of *Markzannes v. Bermuda Star Cruise Line, Inc.*, 545 So.2d 537

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Ikospentakis, supra, 915 F.2d at 177. *Kassapas v. Arkon Shipping Agency, Inc.*, 485 So. 2d 565 (La. App. 5th Cir. 1986), *cert. denied*, 488 So. 2d 203 (La. 1986) *cert. denied*, 479 U.S. 940, 107 S. Ct. 422 (1986); *Pastewka v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977); *Symeonides v. Cosmar Compania Naviera, S.A.*, 433 So. 2d 281 (La. App. 1st Cir. 1983), *cert. denied*, 440 So. 2d 731 (La. 1983), *cert. denied*, 465 U.S. 1079, 104 S. Ct. 1442 (1984). *cf. Pastewka v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977); *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448 (2d Cir. 1975), *cert. denied*, 423 U.S. 1052, 96 S. Ct. 781 (1976); *see also*: *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir. 1985), *cert. denied*, 474 U.S. 948, 106 S. Ct. 347 (1985) and *Dow Chemical Co. v. Castro Alfaro*, 786 S.W.2d 674 (Tex. 1990), *cert. denied*, 498 U.S. 1024, 111 S. Ct. 671 (1991) (reflecting the practice of multiple filings in non-marine cases). See also the arduous trek of the *Choo* litigation, cited in the petition for certiorari at pp. 11, 12.

(La. 1989), *cert. denied*, 493 U.S. 1043, 110 S.Ct. 837 (1990),[8] the Louisiana Supreme Court concluded that Louisiana courts were free to apply Louisiana procedure[9] rather than the doctrine of *forum non conveniens* to maritime suits filed in state court. American Dredging respectfully submits that this conclusion is incorrect.

The Louisiana Court premised its ruling on the conclusion that *forum non conveniens* concerns "only" the convenience of the maritime defendant which does not "rise to a level of a substantial right." *Miller*, 595 So.2d at 619. (J. A. 66). This conclusion overlooks the critical importance of convenience to maritime commerce and its significance to maritime law[10] and further ignores this Court's recognition of the significance of convenience even in a non-maritime setting. *Reyno*, 454 U.S. at 256; 102 S. Ct. at 266.

It would be a most unfortunate anomaly if the Constitutional protection of maritime commerce could be summarily defeated by the simple expedient of filing in state court, while

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[8] In *Markzannes*, the Louisiana Court overturned the application of *forum non conveniens* and applied local procedure to a claim by a Greek seaman who was injured aboard a Panamanian cruise vessel en route between Bermuda and Boston. *Markozannes v. Bermuda Star Line*, No. 88-C-2440 (La. App. 4th Cir. March 20, 1989 and April 19, 1989), reproduced in the Joint Appendix, pp. 23-30, *rev'd.* 545 So.2d 537 (La. 1989).

[9] Article 123 of the Louisiana Code of Civil Procedure provides the state's procedural rule which permits *forum non conveniens* dismissals in non-maritime cases, but is expressly inapplicable to maritime and Jones Act cases. La C. Civ. Proc. Art. 123.

[10] *See* the language of Judge Story in *DeLovio*, cited *infra* at 19,20.

non-maritime interests have full protection to commercial convenience in diversity actions through the *Piper*, *Gulf Oil* and *Koster* decisions[11] and in state actions under La. Article 123. Petitioner respectfully urges that the concurrent jurisdiction of the Judiciary Act was never intended to permit the plaintiff to escape the application of fundamental admiralty principles articulated pursuant to this Court's Constitutional grant of authority.

American Dredging respectfully submits that the Louisiana Court erred through its myopic focus on non-maritime jurisprudence.[12] Eschewing an analysis of admiralty jurisprudence, the Louisiana Court was persuaded by federal diversity cases and consideration of the "so-called `reverse-*Erie*' doctrine." *Miller*, 595 So.2d at 618 (J.A.65). Without any consideration of the relationship of this doctrine to maritime law, the *Miller* Court inferred that *forum non conveniens* was mere federal procedure. In place of maritime authority, the Louisiana Court relied, *inter alia*, upon this Court's decision in *Missouri ex rel. Southern R. Co. v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950). In *Mayfield*, this Court considered whether a Missouri state court in adjudicating railroad worker claims was bound by the federal

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[11] *Cf. Davis v. Farmers' Co-Op Equity Co.*, 262 U.S. 312, 316-318, 43 S.Ct. 556, 558 (1923), noting limitations on state jurisdictional statutes based in part, upon commercial convenience with respect to interstate operations protected by the commerce clause.

[12] The Louisiana Court's analysis in *Miller* is contrasted with its analysis in *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634, 640-644 (La 1992) wherein the Louisiana Supreme Court reviewed the maritime jurisprudence and scope of uniformity before determining that Louisiana local interests warranted application of a Louisiana strict liability standard to a helicopter crash. In the instant case, there are no local interests to be protected by Louisiana's non-maritime procedure.

rule of *forum non conveniens*.[13] This Court held that the state courts were free to apply or not apply this principle according to local law. *Mayfield*, 340 U.S. at 5, 71 S. Ct. at 3. The *Miller* Court was then persuaded to apply its local procedure because "the Jones Act is based upon and incorporates by reference the FELA." *Miller*, 595 So.2d at 618; (J.A. 63, 64).

The decision in *Mayfield*, though simple and clear, is inapposite here. Neither the Federal Employer's Liability Act, 45 U.S.C. §§ 51 *et seq.* nor the underlying claims of railroad workers involve Constitutional issues of admiralty jurisdiction or uniform maritime law. While it is true that the Jones Act (46 U.S.C. § 688) incorporates the FELA liability standards, the incorporation of that standard did not thereby undermine the Constitutional premise of admiralty jurisdiction or eradicate uniform principles of admiralty. Congress did not unwittingly destroy the uniformity of admiralty protected by the Constitution by adopting for seamen the liability standard applicable to railroad workers.

The supplantation of maritime law can not be sustained by mechanical reference to concepts of substance and procedure. *Forum non conveniens* is not a mere procedural device so disconnected from admiralty jurisdiction that it becomes inapplicable under a "reverse-*Erie*" analysis. The "*forum non conveniens* problem . . . is inescapably connected with the substantive rights of the parties in any given type of suit, rather than being `merely' an `administrative' problem." A. Bickel, *Forum Non Conveniens in Admiralty*," 35 Cornell L. Quarterly

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[13] *Forum non conveniens* had not long before been incorporated into common law in the 1947 decisions in *Gilbert* and *Koster*, *supra* at 13,14.

12, 17 (1949). The question presented here is not solved by the so-called "reverse-*Erie*" formula. The jurisprudential reference to "reverse-*Erie*" stems from considerations of parallel, though not altogether symmetrical or reciprocal, principles involving the uniformity doctrine of admiralty, the "savings to suitors" clause and the *Erie* doctrine.[14] The uniformity doctrine mandates that admiralty principles be applied uniformly by all federal and state courts. The "savings to suitors" clause allows maritime claimants access to state courts without infringing upon those uniform principles. The *Erie* doctrine mandates that state substantive principles be applied by federal courts in diversity cases. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817 (1938). The "reverse-*Erie*" concept is no doctrine at all, but a handy metaphor to recognize the potential application of federal or state procedure when not in conflict with controlling principles.[15]

The "reverse-*Erie*" metaphor cannot provide a mechanical answer by facile reference to concepts of "substance" and "procedure." Legal principles do not always fall exactly into such finite categories. *Forum non conveniens* has been an established feature of admiralty since long before the articulation of the *Erie* doctrine or the enactment of federal procedural rules.[16] The nominal analysis of the *Miller* Court overlooks the reality that many fundamental principles of admiralty, while

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[14] See the discussion of the Fifth Circuit in *Exxon*, 817 F.2d at 319.

[15] The *Miller* Court's reference to this Court's decision in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 106 S. Ct. 2485 (1986), seems particularly inapposite. Nothing in *Tallentire* warrants the disavowal of such a deeply-rooted admiralty principle in favor of a local procedural rule

[16] Fed. Rules Civ. Proc. Rules 1-86, 28 U.S.C.A.

affecting procedure, are nonetheless characteristic features which make admiralty a distinct and unique body of law. For example, maritime law's protection of seamen finds direct expression in legal rules which govern procedural questions of burden of proof and sufficiency of evidence. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S. Ct. 246 (1942); *Kossick v. United Fruit Co.*, 365 U.S. 731, 81 S. Ct. 886 (1961). The rules are no less applicable in state court because they impact and conflict with state procedural rules. *See, e.g. Neely v. Hollywood Marine, Inc.*, 530 So. 2d 1116, 1122-1123 (La. 1988), *cert. denied*, 489 U.S. 1080, 109 S. Ct. 153 (1989); *Bennett v. Sedco Maritime*, 520 So. 2d 894, 905 (La. App. 3d Cir. 1987).

In *Garrett*, this Court upheld the application of the admiralty burden of proof rule and overturned the decision of the Pennsylvania Supreme Court, which held the issue was procedural and controlled by state law. *Garrett*, 317 U.S. at 243, 244; 63 S. Ct. at 249, 250. This Court noted that the "deeply rooted" admiralty rule regarding burden of proof was a part of the very substance of [the seaman's] right and [could] not be considered a mere incident of a form of procedure." *Garrett*, 317 U.S. at 252, 253. The language of Justice Black regarding the interplay of admiralty law and state practice is particularly apposite:

> It must be remembered that the state courts have concurrent jurisdiction with the federal courts to try actions either under the Merchant Marine Act or *in personam* such as maintenance and cure. The source of the governing law applied is in the national, not the state, governments. *If by its practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would*

> *actually deny, federal rights* which Congress, by providing alternative remedies, intended to make not less, but more secure. (Emphasis added.)

Garrett, 317 U.S. at 245.

This is not to say that state interests are not relevant and may not be considered. The doctrine is, by nature, a discretionary function of the local court and consideration of relevant public and private factors is mandated by the *forum non conveniens* process. Therefore, in cases where the state has significant interest in the dispute, the discretionary balance will undoubtedly weigh in favor of retaining jurisdiction. However, in cases such as this one where there is no such interest, the trial court in its discretion may dismiss the litigation subject to guaranteeing the claimant's right to an adjudication in a suitable forum.

The doctrine of *forum non conveniens* protects the legitimate rights of all maritime litigants. It accords appropriate deference to the maritime suitor's choice of forum while protecting the maritime defendant from exposure to an unreasonable, vexatious and oppressive forum selection and allowing the trial court to consider public or local interests in the dispute. American Dredging respectfully submits that this important protection of the rights of all maritime litigants cannot be defeated as a mere matter of procedure.

IV.
Application of *Forum Non Conveniens* May Not Automatically Be Defeated By Reference to Applicable Law or Citizenship of the Parties

The doctrine of *forum non conveniens* provides a "flexible" discretionary basis for determination of the appropriate

forum for adjudication of disputes. *Piper*, 454 U.S. at 251, 102 S. Ct. at 263. Under its guidance, the trial court first determines the availability of an alternate forum and then examines the private and public factors articulated in *Gilbert* and *Koster* to determine whether to adjudicate the dispute in the plaintiff's chosen forum or dismiss the claim subject to adjudication in an alternate convenient forum. *Piper*, 454 U.S. at 249-257, 102 S.Ct. at 262-267.

This doctrine guides the trial court through its forum analysis and expressly avoids rigid mandatory rules for the determination of the proper forum. Issues such as the applicable law and citizenship of the parties, while relevant to the analysis, are not dispositive of the discretionary process. *Piper*, 454 U.S. at 248-250; 102 S.Ct. at 262, 263. The *Piper* Court upheld these discretionary principles, relying in part upon its admiralty decision in *Canada Malting Co. v. Paterson Steamships, Ltd.*, 285 U.S. 413, 52 S.Ct. 412 (1932). *Canada Malting* involved a maritime collision dispute between Canadian claimants. The Court upheld the discretionary dismissal of the suit even though the collision occurred in U.S. territorial waters and although the U.S. courts might have applied U.S. law. *Canada Malting*, 285 U.S. at 420. The libellant sought to overturn the dismissal on grounds that since the incident was governed by U.S. law, jurisdiction was mandatory. The Court expressly disavowed this contention:

> We have no occasion to inquire by what law the rights of the parties are governed, as we are of the opinion that, *under any view of that question, it lay within the discretion of the District Court to decline to assume jurisdiction over the controversy.* (Emphasis added.)

Canada Malting, 285 U.S. at 419, 420; 52 S.Ct. at 414.

Following the *Canada Malting* holding, the *Piper* Court held that the possibility of a change in the applicable law unfavorable to the claimant would not automatically defeat the defendant's *forum non conveniens* motion. *Piper*, 454 U.S. at 247, 102 S.Ct. at 261. The Court stated that such a rigid rule would render the doctrine " virtually useless" and prevent the very protection it was designed to afford. *Piper*, 454 U.S. at 250, 102 S. Ct. at 263. The discretionary forum analysis likewise considers the citizenship and residence of the parties. The claimant's choice of "home forum" is given substantial deference, but not dispositive weight. *Koster*, 330 U.S. at 524, 525, 67 S.Ct. at 831, 832; *Piper*, 454 U. S. at 255, 102 S. Ct. at 265, 266. As stated by Justice Marshall in *Piper*, "[c]itizens or residents of the forum deserve somewhat more deference than foreign plaintiffs, but dismissal should not be automatically barred when a plaintiff filed suit in his home forum. As always, if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper." *Piper*, U.S. at 255; S.Ct. at 266, n. 23.

Following the *Piper* standard, lower federal courts have held that the application of United States or local law by the plaintiff's chosen forum (or a possible adverse change in applicable law) is not dispositive of the forum analysis. *In re Aircrash near New Orleans*, 821 F.2d 1141, 1165 (5th Cir. 1987) (*en banc*); *Ali v. Offshore Co., Inc.*, 753 F.2d 1327, 1333 (5th Cir. 1985); *Cruz v. Maritime Co. of Philippines*, 702 F.2d 47, 48 (2d Cir. 1983); *Sherrill v. Binkerhoff Marine Drilling*, 615 F.Supp. 1021, 1033-1035, (C.D. Cal. 1985); *Vargas v. M/V MINI LAMA*, 709 F.Supp. 117, 118 (E. D. La. 1989); *Gazis v. John S. Latsis, Inc.*, 729 F. Supp. 979, 986-988 (S.D.N.Y. 1990). A few earlier decisions also recognized this rule, relying upon *Canada Malting* and other authorities. *See, e.g.*: *Fitzgerald v. Texaco*, 521

F.2d 448 (2d Cir. 1975), *cert. denied* 433 U.S. 1052, 96 S.Ct. 781 (1976); affirming dismissal even though foreign law may be less favorable to claimants; *La Seguridad v. Transytur Line*, 707 F.2d 1304 (11th Cir. 1983), remanding for possible dismissal even though U. S. law (COGSA) applicable; *Alcoa S.S. Co., Inc. v. M/V NORDIC REGENT*, 654 F.2d 147, 159 (2d Cir. 1980) (*en banc*), upholding the dismissal even though the foreign forum law would allow a lesser recovery. A few decisions have held that in Jones Act cases, a *forum non conveniens* dismissal was prohibited when the seaman claimant would be relegated to a foreign (non-United States) forum and thereby be denied a Jones Act remedy. *Zipfel v. Halliburton Co.*, 832 F.2d 1147, (9th Cir. 1987), *cert. denied* 486 U.S. 1054, 108 S.Ct. 2819 (1988); *Dalla v. Atlas Maritime Co.*, 562 F.Supp. 752, 758 (C. D. Cal. 1983); *DeMateos v. Texaco, Inc.*, 562 F.2d 895, 899 (3d Cir. 1977) (*dictum*); *see also* the Fifth Circuit cases of *Fisher v. Agios Nicoloas V*, 628 F.2d 308 (1980) and *Chiazor v. Transworld Drilling Co., Ltd.*, 648 F.2d 1015, 1017-1018 (5th Cir. 1981) which were overruled in *Aircrash*, 821 F.2d at 1163, 1164, to the extent that they automatically prohibited *forum non conveniens* dismissal.

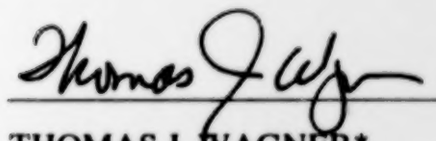
In the instant case, the applicable law - the Jones Act and the general maritime law - will be applied whether this action is litigated in Louisiana or in the convenient Pennsylvania forum. Mr. Miller did not sue in his home forum, and there is absolutely no connection between Mr. Miller's claim and Louisiana. Prior to his accident, he had become a resident of Pennsylvania and had joined a Pennsylvania union. Through the union, he was employed by American Dredging, a Pennsylvania corporation. He was assigned the Tug JOHN R operating on the Delaware River, the boundary between New Jersey and Pennsylvania. The subject injury occurred aboard the tug on the Delaware River off Marcus Hook, Pennsylvania. The vessel is available for inspection on the Delaware River at the situs of its operations. In no

legal or common sense can the Civil District Court of Orleans Parish of Louisiana be considered the plaintiff's "home forum." American Dredging respectfully submits that the trial court correctly recognized and applied the doctrine of *forum non conveniens* to the case at bar.

CONCLUSION

For the foregoing reasons, petitioner, American Dredging Company, respectfully prays that the decision of the Louisiana Supreme Court be reversed and that the dismissal of this action by the trial court be reinstated.

Respectfully submitted,



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